Lim Geok Lan (sued as secretary and office-bearer of Gereja Perhimpunan Tuhan Grace Sungai Way/Subang Selangor) v Ketua Pengarah Insolvensi

HIGH COURT (SHAH ALAM) — ORIGINATING SUMMONS NO BA-24NCC-50–06 OF 2022
KHADIJAH IDRIS J
31 DECEMBER 2024

Civil Procedure — Interest — Judgment debt — Judgment made against Director General of Insolvency — Whether court could impose interest on judgment made against Director General of Insolvency — Rules of Court 2012 O 42 r 12

Companies and Corporations — Winding up — Fees — Realisation fee — Registrar of Society ('ROS') cancelled registration of plaintiff's society and requested that Director General of Insolvency to wind up plaintiff's society — Plaintiff's society transferred its monies in bank accounts to insolvency department — Minister of Home Affairs allowed plaintiff's society's appeal against order of ROS in cancelling registration of plaintiff's society — Insolvency department only returned part of cash given by plaintiff's society and charged realisation fee — Whether imposition of realisation fee was irregular and invalid — Companies (Winding-Up) Rules 1972 r 195(1), Schedule 2, Table C, para 2(ii) — Societies Act 1966 s 17(1)(e)

The plaintiff in the present case was the secretary of Gereja Perhimpunan Tuhan Grace Sungai Way/Subang Selangor ('the society') whilst the defendant was the Director General of Insolvency. Initially, due to the alleged contravention of the Societies Act 1966 ('Act 832') and the constitution of the society, the Registrar of Societies ('ROS') cancelled the registration of the society ('the ROS's order') and requested the defendant to wind up the affairs of the society in accordance with s 17(1) of Act 832. In order to comply with such process, the society had transferred a total sum of RM11,703,294.77 from the society's bank accounts to the defendant. The society had appealed against the ROS's order and on 1 April 2021, the Minister of Home Affairs had allowed such appeal. Pursuant to the successful appeal by the society, the defendant had returned the amount of RM11,233,587.23 to the society. Such amount clearly was not the amount initially given by the society. This was because, the defendant had charged the society its realisation fee amounting to RM469,631.79 pursuant to r 195(1), Schedule 2, Table C of the Companies (Winding-Up) Rules 1972 ('the CWUR 1972') read together with s 17(1)(e) of Act 832. In calculating the realisation fee, the defendant had used the

formula stipulated at para 2(ii) of Table C. Aggrieved, the plaintiff filed the present amended originating summons ('the amended OS') to seek the following reliefs: (a) that the realisation fee amounting to RM469,631.79 ('the said amount') which was charged by and paid to the defendant was irregular and void ('prayer 1'); (b) that the defendant to return the said amount to the society within seven days from the date of the court's order together with interest at the rate of 5%pa to be calculated from 30 July 2021 until full payment to the society ('prayer 2'); (c) that the costs of the action to be paid by the defendant to the plaintiff within seven days from the date of the court's order ('prayer 3'); and (d) any further or other relief deemed just and expedient by the court ('prayer 4'). The main issue that arose for the court's determination was whether the imposition of the defendant's realisation fee, ie the amount of RM469,631.79 was irregular and void.

Held, allowing prayer 1 and prayer 2 of the amended OS with no order as to costs:

(1) The word 'shall' was no where mentioned in r 195(1) of the CWUR 1972. No doubt the word 'shall' appeared in paras 1, 2 and 3 of the Second Schedule. However, it was obvious the word 'shall' was in reference to the party that was tasked with the collection of the fees mentioned in Table A, B, C and D ie either the Official Receiver or the Liquidator. There was nothing in paras 1, 2 and 3 of the Second Schedule to indicate the word 'shall' was in respect of imposing fees (as set out in Table A, B, C and D) mandatorily. As such, the defendant's reasoning (that it was mandatory for the defendant to impose a fee) was flawed and untenable (see paras 35 & 37–40).

(2) Assuming the defendant was entitled to impose the defendant's fees, since the defendant invoked para 2(ii) of Table C to impose the said fees, it was incumbent on the defendant to provide evidence to support and justify the imposition of such fees. In this respect evidence must be adduced to show the work carried out by the defendant to realise the assets of the society including particulars of the assets realised and the proceeds. However, there was no such evidence (see para 42).

(3) The word 'realised' (which appeared in para 2(ii) of Table C of the Second Schedule) meant to convert the assets of the society from its current form into the form of money or cash. In the present case, it was not disputed that the society owned immovable assets, but the defendant did not show that these immovable assets were realised ie disposed of for the purpose of winding up of the society. In particular there was no evidence to show which of the assets of the society was realised, the total proceeds of the realisation and the expenses incurred in realising the assets. Instead, the defendant's fees were imposed on cash belonging to the society in the sum of RM11,703,294.77 which was credited into the estate of the society

after the ROS's order was made. It was apparent the sum of RM11,703,294.77 was not the net value from the assets realised by the defendant. The sum RM11,703,294.77 was obviously hard cash and how the cash could be possibly realised was mind boggling (see paras 43 & 45–46).

(4) Based on the reasons stated above, it was wrong for the defendant to invoke para 2(ii) of Table C of the Second Schedule of the CWUR 1972 and imposed the defendant's fees. On the evidence adduced, there was no legal basis for the defendant to collect the defendant's fees. As such the imposition of the sum RM469,631.79 was irregular and void and ought to be returned to the society (see para 47).

(5) Since the sum RM469,631.79 was wrongfully imposed, an order would have to be made by the court for the return of the said sum to the society. Under the circumstance the sum RM469,631.79 tantamount to a judgment debt which would be entitled to interest as statutorily conferred by way of O 42 r 12 of the Rules of Court 2012 ('the ROC 2012'). There was nothing in O 42 r 12 of the ROC 2012 which excluded any judgment made against the defendant ie the Ketua Pengarah Insolvensi from the imposition of the 5% interest. Importantly, the defendant failed to provide any statutory provision to support its argument that interest ought not to be imposed on the defendant (see paras 54–55).

[Bahasa Malaysia summary

Plaintif dalam kes semasa ialah setiausaha Gereja Perhimpunan Tuhan Grace Sungai Way/Subang Selangor ('pertubuhan tersebut') manakala defendan ialah Ketua Pengarah Insolvensi. Pada mulanya, disebabkan dakwaan melanggar Akta Pertubuhan 1966 ('Akta 832') dan perlembagaan pertubuhan tersebut, Pendaftar Pertubuhan ('PP') membatalkan pendaftaran pertubuhan tersebut ('perintah PP') dan meminta defendan menggulung hal ehwal pertubuhan tersebut mengikut s 17(1) Akta 832. Bagi mematuhi proses tersebut, pertubuhan tersebut telah memindahkan sejumlah RM11,703,294.77 daripada bank akaun pertubuhan tersebut kepada defendan. pertubuhan tersebut telah membuat rayuan terhadap perintah PP dan pada 1 April 2021, Menteri Dalam Negeri telah membenarkan rayuan tersebut. Berdasarkan rayuan yang berjaya oleh pertubuhan tersebut, defendan telah memulangkan sejumlah RM11,233,587.23 kepada pertubuhan tersebut. Jumlah tersebut jelas sekali bukanlah jumlah yang diberikan oleh pertubuhan tersebut pada mulanya. Ini kerana, defendan telah mengenakan fi penghasilan kepada pertubuhan tersebut berjumlah RM469,631.79 menurut k 195(1), Jadual Kedua, Susunan C Kaedah-Kaedah Syarikat (Penggulungan) 1972 ('KSP 1972') dibaca bersama dengan s 17(1)(e) Akta 832. Bagi mengira fi penghasilan, defendan telah menggunakan formula yang ditetapkan di perenggan 2(ii) Susunan C. Terkilan, plaintif memfailkan saman pemula

terpinda semasa ('SP terpinda') untuk mendapatkan relif-relif berikut: (a) bahawa fi penghasilan berjumlah RM469,631.79 ('jumlah tersebut') yang telah dikenakan oleh dan dibayar kepada defendan adalah tidak teratur dan terbatal ('permohonan 1'); (b) bahawa defendan memulangkan jumlah tersebut kepada pertubuhan tersebut dalam tempoh tujuh hari dari tarikh perintah mahkamah berserta faedah pada kadar 5% setahun yang dikira dari 30 Julai 2021 sehingga pembayaran penuh kepada pertubuhan tersebut ('permohonan 2'); (c) bahawa kos tindakan dibayar oleh defendan kepada plaintif dalam tempoh tujuh hari dari tarikh perintah mahkamah ('permohonan 3'); dan (d) apa-apa relif selanjutnya atau lain yang dianggap adil dan suai manfaat oleh mahkamah ('permohonan 4'). Isu utama yang timbul untuk penentuan mahkamah adalah sama ada pengenaan fi penghasilan defendan, iaitu jumlah RM469,631.79 adalah tidak teratur dan terbatal.

Diputuskan, membenarkan permohonan 1 dan permohonan 2 dalam SP terpinda tanpa perintah berkaitan kos:

(1) Perkataan 'shall' tidak disebut dalam k 195(1) KSP 1972. Tidak dipertikaikan bahawa perkataan 'shall' muncul dalam perenggan 1, 2 dan 3 Jadual Kedua. Walau bagaimanapun, jelas sekali perkataan 'shall' tersebut merujuk kepada pihak yang ditugaskan untuk mengutip fi yang dinyatakan dalam Susunan A, B, C dan D iaitu sama ada Penerima Rasmi atau Penyelesai. Tiada apa-apa dalam perenggan 1, 2 dan 3 Jadual Kedua yang menunjukkan perkataan 'shall' adalah berkenaan dengan pengenaan fi (seperti yang dinyatakan dalam Susunan A, B, C dan D) secara mandatori. Oleh itu, alasan defendan (bahawa adalah wajib bagi defendan untuk mengenakan fi) adalah cacat dan tidak boleh dipertahankan (lihat perenggan 35 & 37–40).

(2) Dengan mengandaikan defendan berhak untuk mengenakan fi defendan, oleh kerana defendan menggunakan perenggan 2(ii) Susunan C untuk mengenakan fi tersebut, adalah menjadi tanggungjawab defendan untuk memberikan keterangan untuk menyokong dan mewajarkan pengenaan fi tersebut. Dalam hal ini keterangan haruslah dikemukakan untuk menunjukkan kerja yang dijalankan oleh defendan untuk merealisasikan aset pertubuhan tersebut termasuk butiran aset yang direalisasikan dan hasilnya. Walau bagaimanapun, tiada keterangan sedemikian dikemukakan (lihat perenggan 42).

(3) Perkataan 'realised' (yang terdapat dalam perenggan 2(ii) Susunan C Jadual Kedua) bermaksud untuk menukar aset pertubuhan tersebut daripada bentuk semasa kepada bentuk wang atau wang tunai. Dalam kes semasa, tidak dipertikaikan bahawa pertubuhan tersebut memiliki aset tak alih, tetapi defendan tidak menunjukkan bahawa aset tak alih ini direalisasikan iaitu dilupuskan untuk tujuan penggulungan pertubuhan

tersebut. Secara khususnya, tidak ada keterangan untuk menunjukkan aset Pertubuhan yang mana yang telah direalisasikan, jumlah hasil realisasi tersebut dan perbelanjaan yang ditanggung untuk merealisasikan aset tersebut. Sebaliknya, fi defendan telah dikenakan ke atas wang tunai kepunyaan pertubuhan tersebut berjumlah RM11,703,294.77 yang dikreditkan ke dalam harta pusaka pertubuhan tersebut selepas perintah ROS dibuat. Adalah jelas bahawa jumlah RM11,703,294.77 bukanlah nilai bersih daripada aset yang direalisasikan oleh defendan. Jumlah RM11,703,294.77 jelas merupakan wang tunai dan bagaimana wang tunai tersebut boleh direalisasikan adalah membingungkan (lihat perenggan 43 & 45–46).

(4) Berdasarkan alasan-alasan yang dinyatakan di atas, adalah salah bagi defendan untuk menggunakan perenggan 2(ii) Susunan C Jadual Kedua KSP 1972 dan mengenakan fi defendan. Berdasarkan keterangan yang dikemukakan, tiada asas undang-undang untuk defendan mengutip fi defendan. Oleh itu, pengenaan jumlah RM469,631.79 tersebut adalah tidak teratur dan terbatal dan jumlah tersebut sepatutnya dikembalikan kepada pertubuhan tersebut (lihat perenggan 47).

(5) Oleh kerana jumlah RM469,631.79 tersebut telah dikenakan secara salah, satu perintah perlu dibuat oleh mahkamah untuk mengembalikan wang tersebut kepada pertubuhan tersebut. Di bawah keadaan tersebut, jumlah RM469,631.79 tersebut terjumlah kepada hutang penghakiman yang berhak mendapat faedah sebagaimana yang diberikan secara berkanun melalui A 42 k 12 Kaedah-Kaedah Mahkamah 2012 ('KKM 2012'). Tiada apa-apa dalam A 42 k 12 KKM 2012 yang mengecualikan apa-apa penghakiman yang dibuat terhadap defendan iaitu Ketua Pengarah Insolvensi daripada pengenaan faedah 5%. Yang penting, defendan gagal memberikan apa-apa peruntukan berkanun untuk menyokong hujahnya bahawa faedah tidak sepatutnya dikenakan ke atas defendan (lihat perenggan 54–55).]

Cases referred to

Dato' Seri Ir Hj Mohammad Nizar bin Jamaluddin v Dato' Seri Dr Zambry bin Abdul Kadir (Attorney General, intervener) [2010] 2 MLJ 285; [2010] 2 CLJ 925, FC (distd)

Vathemurthy a/l Arumugam & Anor v RS Thanenthiran a/l Raman Kutty & Anor [2019] 9 MLJ 212; [2019] 2 CLJ 132; [2018] 1 LNS 1325, HC (refd)

Legislation referred to

Companies Winding-Up Rule 1972 r 195, 195(1), Schedule 2, Table C, paras 1 , 2, 2(ii), 3

Rules of Court 2012 O 42 rr 12, 12A

Rules of High Court 1980 O 42 r 12

Societies Act 1966 ss 9(c), 17(1), (1)(a), (1)(b), (1)(e)

Karen Lee (with Carmen Cheah) (Wong Kian Kheong) for the plaintiff.
Nur Azwani (with Norizan) (Malaysia Department of Insolvency Selangor Branch) for the defendant.

Khadijah Idris J:

INTRODUCTION

[1] By way of an Originating Summons BA-24NCC-50–06 of 2022 ('OS'), the plaintiff seeks the following reliefs:

1. Bahawa jumlah sebanyak RM475,978.14 yang dikenakan oleh pihak Defendan kononnya sebagai fi penghasilan selaras dengan Kaedah 195(1), Jadual 2, Table C, Kaedah-Kaedah (Penggulungan) Syarikat 1972 dibaca bersama Seksyen 17(1)(e) Akta Pertubuhan 1966 (Fi Penghasilan tersebut) dan yang telah dibayar kepada Defendan sendiri daripada wang baki bank Plaintif adalah tidak teratur dan terbatal;

2. Bahawa Defendan memulangkan wang sejumlah RM475,978.14 tersebut kepada Plaintif dalam tempoh 7 hari dari tarikh perintah Mahkamah yang Mulia ini bersama-sama dengan faedah pada kadar 5% setahun dikira dari 30.07.2021 sehingga pembayaran penuh kepada Pertubuhan tersebut;

3. kos tindakan ini dibayar oleh Defendan kepada Plaintif dalam tempoh 7 hari dari tarikh perintah Mahkamah yang Mulia ini; dan

4. apa-apa relief selanjutnya atau lain yang dianggap adil dan suai manfaat oleh Mahkamah yang Mulia ini.

[2] The OS was subsequently amended by way of court order dated 15 September 2022 ('amended OS'). The amended OS is as in encl 15.

[3] By way of the amended OS:

(a) the figure 'RM475,978.14' in prayer 1 and 2 is amended to 'RM469,631.79';

(b) the word 'plaintiff' in prayer 1 and 2 is deleted and substituted with 'Gereja Perhimpunan Tuhan Grace Sungai Way/Subang Selangor'.

[4] After hearing submissions and considering the affidavit evidence this court allowed only prayer 1 and 2 of the amended OS. Aggrieved by the said decision the defendant appealed. Below are the reasons for allowing the amended OS.

SALIENT FACTS

[5] The plaintiff is the secretary of Gereja Perhimpunan Tuhan Grace Sungai Way/Subang Selangor ('society') registered under the Societies Act 1966 ('the Societies Act').

[6] The society is a church known as Grace Assembly ('church') and has been established for almost about 40 years. The church enables the Christians to, among others, carry out their weekly worship services.

[7] The society derives its income from the members of the society.

[8] The defendant is the Director General of Insolvency.

[9] The plaintiff is suing the defendant in her capacity as the secretary and office-bearer of the society pursuant to s 9(c) of the Societies Act.

[10] The church has contributed a lot to the general public and has been very active in charity work which include, among others, setting up a 'Food Bank' which provides food aid and basic necessities to the charitable homes, rehabilitation centres, feeding centres, poor families and individuals in need of assistance, setting up 'Rumah KIDS' specifically for abused, orphaned and abandoned children and has successfully sheltered and rescued no less than 800 children during its operation, setting up 'GRACE Home' which is a sanctuary for destitute community where care, counselling and health services will be provided and a non-profit organisation recognised by the government as 'Persatuan Kebajikan Rumah Grace Klang' and setting up 'Pusat GRACE' in 1988 as rehabilitation centre for drug addicts and alcoholics has integrated more than 600 former drug addicts and alcoholics in the community and their family members.

[11] By way of letter dated 19 August 2020 to the society, the Registrar of Societies ('ROS') notified that the registration of the society is cancelled ('ROS order') on the ground that the society had failed to provide sufficient reasons as to why the registration of the society should not be cancelled for wilful contravention of the Societies Act and the constitution of the society.

[12] The ROS then issued a letter dated 21 August 2020 to the defendant's branch in Selangor notifying the defendant that the registration of the society was cancelled and requested the defendant to wind up the affairs of the society in accordance with s 17(1) of the Societies Act.

[13] Subsequent to the ROS order the society issued a letter dated 31 August

2020 to the Minister of Home Affairs appealing against the ROS order ('appeal'). The society also issued a letter of even date to the ROS requesting a stay of the ROS order.

[14] At a meeting held on 13 October 2020 between the officers from Selangor State Insolvency Department (Selangor Insolvency Department) and the former office bearers of the society, the later were advised to apply to appoint interim manager pending the decision of the appeal. At the said meeting the defendant was informed that the society has the following properties:

(a) 19 lots of property;

(b) 31 vehicles; and

(c) cash in the bank.

[15] On 23 December 2020, officers from the Selangor Insolvency Department visited the society to inspect and check the inventory of the society and a meeting was also held on the same day where the defendant requested for the bank statements of the society from the date of cancellation of the society until end of 2020. The society was also informed that they could appoint an interim manager pending the decision of the appeal to manage and supervise the expenses of the society and to request money from Insolvency Department of Malaysia ('IDM').

[16] At the instruction of IDM, the following bank accounts of the society ('bank accounts') were closed and the balance in the bank accounts was transferred to the defendant. The fixed deposits were also lifted and all interest accrued was forfeited:

1	31 December 2020	Malayan Banking Bhd [Account No: 014178218190]	RM9,702,560.35
2	4 January 2021	Public Bank Bhd [Account No: 3173049014]	RM1,143,857.69
3	4 January 2021	Public Bank Bhd [Account No: 3117663924]	
4	4 January 2021	Public Bank Bhd [Account No: 1080122222]	
5	4 February 2021	Public Bank Bhd [Account No: 3152887417]	RM838,117.78
Total			RM11,684,535.82

[17] By way of a letter dated 25 February 2021, the Selangor Insolvency Department:

(a) informed the society that the defendant would take over the assets and would proceed with the administration of the assets and liabilities of the society; and

(b) requested the society to give the keys of the office and store as well as cash in the safe to the defendant through the Selangor Insolvency Department.

[18] Meetings were held at the office of the Selangor Insolvency Department on 2 March 2021, 3 March 2021 and 5 March 2021 whereby the former office bearers of the society had given the keys of office and store and cash of the society which had been converted to bank draft in the total sum of RM18,758.95 to the officer of the Selangor Insolvency Department.

[19] As at 5 March 2021, a total sum of RM11,703,294.77 was given to the defendant and this is not disputed.

[20] On 1 April 2021 the Home Minister allowed the society's appeal.

[21] By way of a letter dated 8 April 2021, the Selangor State ROS informed that they have reactivated the society in 'e-roses' system since 5 April 2021.

[22] Subsequently the society issued a letter dated 23 May 2021 to the defendant's branch in Selangor requesting all the society's monies be transferred to the society's new bank account so that the society could settle the bills overdue.

[23] On 30 July 2021 the defendant returned the sum of RM11,233,587.23 by transferring the sum to the society's new bank account.

[24] Through its letter dated 17 August 2021, the defendant informed the society, among others, that:

(a) the defendant had received bank balance totalling RM11,703,294.77;

(b) the realisation fee chargeable by the defendant was RM469,631.79 ('defendant's fees') according to r 195(1), Schedule 2, Table C of Companies Winding-Up Rule 1972 ('r 195 of CWUR 1972') read together with s 17(1)(e) of Societies Act; and

(c) the society's request for the defendant's fees to be waived or for a nominal fee could not be considered as the defendant is bound by the relevant provisions of the law. The society was advised to take the necessary steps including filing an application to the court if the society is not satisfied with the defendant's decision rejecting the society's request.

A ISSUE

[25] The main issue here is whether the imposition of the defendant's fees ie RM469,631.79 is irregular and void.

B *Defendant's contentions*

[26] It is the defendant's stand that the defendant's fees is lawfully imposed under r 195(1) of the CWUR 1972 premised on the following:

C (a) pursuant to the ROS order, the registration of the society was cancelled, the assets of the society vests in the defendant for the purpose of winding up the affairs of the society, as provided in s 17(1) of the Societies Act;

(b) upon being vested with the assets of the society, the defendant has taken actions towards the winding up of the society including, among others, calling for a meeting with the office bearers of the society, obtaining information and relevant documents relating to the society, requesting for the monies of the society to be handed over to the defendant and issued letters to the banks holding the monies of the society instructing the banks to close the society's accounts and to surrender the credit balance to the defendant;

(c) the above actions is in accordance with the statutory duties accorded to the defendant under s 17(1)(e) for the purpose of discovery and realisation of assets;

F (d) the word 'shall' which appears in r 195 makes it mandatory for the defendant to collect fees. The defendant cited the case *Dato' Seri Ir Hj Mohammad Nizar bin Jamaluddin v Dato' Seri Dr Zambry bin Abdul Kadir (Attorney General, intervener)* [2010] 2 MLJ 285; [2010] 2 CLJ 925 to support its position that the word 'shall' in its ordinary signification is mandatory; and

G (e) the defendant's fees is calculated based on the amount of monies that the defendant received from the moveable and immoveable assets of the society. The said fees is the government's revenue.

H **[27]** Even though the society is a religious and non-profit organisation, there is no statutory provisions which exempts the society from imposition of fees. Neither is there any statutory provisions which accord to the defendant the discretionary powers to impose nominal fees on the society.

I **[28]** It is also contended that interest and costs of this action ought not to be ordered against the defendant. On issue of interest it is argued there is no statutory provisions which allows interest to be imposed on the defendant as the defendant is not a financial institution which generates profits. The

defendant is the government agency that administers bankruptcy cases and bankrupts' affairs and also administer the winding up companies as well as administration of deregistered associations and trade unions. As there is no interest earned from the monies credited into the estate of the society the plaintiff should not have sought interest from the defendant.

Society's contentions

[29] Whereas the society contends r 195(1) of the CWUR 1972 has been wrongfully applied by the defendant for the following reasons:

(a) nothing in r 195(1) of the CWUR 1972 mentioned the word 'shall';

(b) there is no realisation of assets in this case. The ordinary and legal meaning of 'realisation' or 'realisation' is conversion of assets or property into cash or money (see paras 45–52 of the plaintiff's written submission); and

(c) there is no conversion of assets in this case. The ordinary and legal meaning of 'convert' is to change one thing into another ie the change of form or character into another of different kind (see paras 53–57 of the plaintiff's written submission).

[30] Whilst not admitting the defendant is entitled to the defendant's fees, it is further submitted that the sum RM469,631.79 deducted by the defendant for the actions taken by the defendant to arrange meetings, issued letters, collected the society's cash and cash in the banks is simply excessive, unreasonable and unjustifiable.

[31] The defendant failed to prove the remuneration imposed in the form of the defendant's fees was justifiable. The defendant's affidavit failed to provide evidence to show the amount of work and the time spent, there is no evidence of the skills exercised by the defendant and no supporting documents exhibited to justify the remuneration of RM469,631.79.

COURT'S FINDINGS

[32] The statutory provisions relevant to this instant case is as follows:

(a) s 17(1) of the Societies Act:

> Consequence of order of the Minister under section 5, refusal of the Registrar to register a local society under section 7 and cancellation of registration of a registered society under this Act.
>
> 17(1) Upon the making of an order by the Minister under section 5 or upon the refusal of the Registrar to register a local society under section 7, or *upon the cancellation of the registration of a registered society* under any provision of

this Act, the following consequences shall ensue:

(a) the property of the society shall forthwith vest either in the Director General of Insolvency or if any other officer be, by the terms of the order under section 5, appointed by the Minister for the purpose of winding up the affairs of the society, then in such other officer;

(b) the Director General of Insolvency or such other officer shall proceed to wind up the affairs of the society, and after satisfying and providing for all debts and liabilities of the society and the costs of the winding up shall pay the surplus assets, if any, of the society —

(i) into the Consolidated Fund if the registration was refused or cancelled by virtue of an order under section 5 or on the grounds stated in paragraph 7(3)(a) or subparagraph 13(1)(c)(ii) or if the members of the society so request, and the Minister so directs that such surplus assets be paid into the Consolidated Fund; and

(ii) in all other cases, to members of the society according to the rules of the society, or if there be no such rules, then the Director General of Insolvency or such other officer shall prepare a scheme for the application of such surplus assets for the approval of the High Court;

(c) the application for approval of such scheme shall be made by way of originating summons and may be amended by the Court in such way as it thinks proper under the circumstances of the case;

(d) upon the approval of the Court to such scheme or amended scheme being obtained, the surplus assets, the subject of such scheme shall be held and applied by the Director General of Insolvency or such other officer upon the terms and to the purposes prescribed in the order of the Court; and

(e) for the purposes of the winding up the affairs of the society, the Director General of Insolvency or such other officer shall have all the powers which are vested in the Director General of Insolvency by any written law relating to bankruptcy for the purpose of the discovery and realisation of the property of a debtor, and also such powers as are by any written law relating to companies vested in an official liquidator and all the provisions of the said laws relating to bankruptcy and to the winding up of companies, so far as they relate to the discovery and realisation of the property of a debtor and to the winding up of a company, shall, mutatis mutandis, apply to the winding up of the affairs of the society under this Act.

(b) r 195(1) of CWUR 1972:

195 Fees

(1) The fees payable in respect of winding-up of companies under these Rules are prescribed in the *Second Schedule*.

...

(c) the Second Schedule:

SECOND SCHEDULE

(Rule 195)

1. the fees mentioned in Table A shall be paid to Court.

2. the fees mentioned in Tables B and C shall be collected by the Official Receiver.

3. the fees mentioned in Table D shall be collected in stamps by the Official Receiver or the Liquidator.

SCALE OF FEES

TABLE A

		RM	sen
1	Every petition ...	50	00
2	Every bond with sureties ...	10	00
3	Every subpoena or summons ...	2	00
4	Every order of Court ...	10	00
5	Every order made in Chambers ...	5	00
6	Every affidavit filed other than proof of debt ...	2	00
7	For taking an affidavit or an affirmation or a declaration for each person making the same ...	1	00
8	Every exhibit to be marked ...		70
9	Every application for search other than by the petitioner or liquidator ...	3	00
10	Every office copy, each folio of 100 words or part		50
11	On every application to the Court to approve a reconstruction or other scheme by which the affairs of the company are to be wound up otherwise than by realisation and distribution of assets ...	100	00

			RM	sen	
12	And in addition to item (11), on every order of Court approving such construction or scheme, a free according to the following scale on the estimated assets of the company, viz:				
	(i) on the first RM500,000 or fraction thereof ...				1/2 percent
	(ii) on the next RM500,000 or fraction thereof ...				1/4 percent
	(iii) above RM1,000,000 or fraction thereof ...				1/8 percent
13	On an application under section 308 ...		50	00	

TABLE B

		RM	sen
1	Every inspection of any document lodged with the Official Receiver ...	10	00
2	Every copy of extract, each folio of 100 words or part		50
3	Every application for a special bank account ...	20	
4	Every order of the Official Receiver for a special bank account ...	20	
5	Every application for search ...	10	

		RM	sen
6	Every application to the Official Receiver for payment of money out of the Companies Liquidation Account:		
	(i) If the amount applied for does not exceed RM10.00		50
	(ii) Where the amount applied for exceeds RM10.00	1	00
	(iii) Where the amount applied for exceeds RM100.00	5	00
7	On every payment out of the Companies Liquidation Account ...		3 per cent

TABLE C

		RM	sen
1	Where the Official Receiver acts as provisional Liquidator only:		
	(i) In respect of each member, creditor or debtor	1	00

			RM	sen	
		(ii) On the value of the Companys assets as estimated in the statement of affairs:			
		(a) on the first RM100,000 or fraction thereof ...			1 per cent
		(b) above RM100,000 ...			1/2 per cent
	2	Where the Official Receiver is the liquidator:			
		(i) In respect of each member, creditor or debtor	1	00	
		(ii) Upon the total net assets realised:			
		(a) on the first RM50,000 or fraction thereof ...			6 per cent
		(b) on the next RM50,000 or fraction thereof ...			5 per cent
		(c) above RM100,000 ...			4 per cent

		RM	sen	
	(iii) Upon the amount available for distribution to Creditors or contributories and each time a Page 107 distribution is made:			
	(a) on the first RM50,000 ...			4 per cent
	(b) on the next RM50,000 ...			3 per cent
	(c) above RM100,000 ...			2 per cent

TABLE D

		RM	sen
1	Proof of Debt:		
	(a) Fee for taking an affidavit or a statutory declaration ...	1	00
	(b) Fee for making each exhibit referred to in an affidavit or a statutory declaration		70
	(c) Filing fee if claim is over RM10 ...	1	00
2	Fee on Special Proxy ...	1	00

[33] For purposes of imposing the defendant's fees, the defendant invoked

A the formula stipulated at para 2(ii) of Table C which is:

2. Where the Official Receiver is the liquidator:

(i) ...

B (ii) *Upon the total net assets realised:*
(a) on the first RM50,000 or fraction thereof: 6 per cent
(b) on the next RM50,000 or fraction thereof: 5 per cent
(c) above RM100,000: 4 per cent (Emphasis added.)

C *Whether imposition of the sum RM469,631.79 is irregular and void*

[34] The defendant derived the sum RM469,631.79 ie the defendant's fees in the following manner (see para 37 of the defendant's affidavit):

D 6% – RM50,000 on the first fraction	= RM 3,000
5% – RM50,000 on the next fraction	= RM 2,500
4% – RM11,603,294.77 above RM100,000	= RM 464,131.79
E Jumlah Fi Penghasilan yang diambil	: RM 469,631.79

[35] It is the defendant's stand that since

(a) the money of the society in the sum of RM11,703,294.77 is the asset of F the society; and

(b) that the said sum is credited into the society's estate; and

(c) pursuant to the word 'shall' in r 195(1) of CWUR 1972,

G it is mandatory for the defendant to impose a fee.

[36] It therefore follows a fee based on the formula at para 2(ii) of Table C ie the defendant's fees must be imposed and collected from the society.

H **[37]** This court is of the view the defendant's reasoning is flawed and untenable for the reasons stated below.

[38] As rightly pointed out by the society, the word 'shall' is no where mentioned in r 195(1) of the CWUR 1972. The said rule provides a window I for fees which is payable in respect of winding up of companies under the CWUR 1972 and such fee is as prescribed in the Second Schedule. The word 'payable' must ordinarily means either fee has to be paid or fee may be paid or there is no fee to be paid at all, depending very much on the circumstances of each winding up case.

[39] No doubt the word 'shall' appears in para 1, 2 and 3 of the Second Schedule. However it is obvious the word 'shall' is in reference to the party that is tasked with the collection of the fees mentioned in table A, B, C and D ie either the official receiver or the liquidator.

[40] There is nothing in para 1, 2 and 3 of the Second Schedule to indicate the word 'shall' is in respect of imposing fees (as set out in Table A, B, C and D) mandatorily. In fact a perusal of Table A, B and C shows the various fees prescribed is in respect of various works carried out in relation to a winding up petition filed in court, for example:

(a) Table A prescribed the fees that shall be paid to court, for example affidavits filed in court, exhibits marked and court orders. Whether there are fees to be paid depend on whether there are affidavits filed or order of the court. This certainly depend on the facts of each winding up case;

(b) Table B prescribed the fees that shall be collected by the official receiver ie fees shall be paid to the official receiver for example where there is inspection of documents lodged with the official receiver or search application made to the official receiver. Whether there are such fees to be paid depend on whether there are documents lodged or search application made to the official receiver. Again this certainly depend on the facts of each winding up case;

(c) Table C prescribed the fees that shall be collected by the official receiver for example in para 2(ii) where the official receiver in its capacity as a liquidator, as part of the ongoing process of winding up process, has realised the assets of the company. Whether there are such fees to be collected by the liquidator depend on whether there are assets of the company which is realised. Again, this certainly depend on the facts as not all companies has assets to be realised for the benefit of its creditors; and

(d) Table C prescribed the fees that shall be collected by the official receiver or the liquidator in relation to filing proof of debt, if any.

[41] Whilst the case cited by the defendant ie *Dato' Seri Ir Hj Mohammad Nizar Jamaluddin* provides guidance as to the interpretation or construction of the word 'shall', the defendant's reliance on the said case to support the imposition of the defendant's fees is misplaced because the word 'shall' in para 2 of the Second Schedule is not intended for the imposition of fees.

[42] Assuming the defendant is entitled to impose the defendant's fees, since the defendant invoked para 2(ii) of Table C to impose the said fees, it is incumbent on the defendant to provide evidence to support and justify the imposition of such fees. In this respect evidence must be adduced to show the

work carried out by the defendant to realise the assets of the society including particulars of the assets realised and the proceeds. However there is no such evidence.

[43] In this respect this court is in agreement with the society's contentions in relation to the meaning of the word 'realised' (and 'realisation') which appears in para 2(ii) of Table C of the Second Schedule. Simply put 'realised' means to convert the society assets from its current form into the form of money or cash.

[44] It is noted that realisation of the assets (if any) of the society by the official receiver is sanctioned by s 17(1)(a), (b) and (e) of the Societies Act. In particular the realisation of the assets is for satisfying and providing for all debts and liabilities of the society so that the affairs of the society can be wound up.

[45] It is not disputed that the society has immoveable assets in the form of 19 lots of property and moveable assets in the form of 31 vehicles. The defendant did not show these assets are realised ie disposed of for the purpose of winding up the society. In particular there is no evidence to show which of the assets of the society is realised, the total proceeds of the realisation and the expenses incurred in realising the assets. The proceeds and the expenses incurred would give the value of the net assets which would be subjected to the fees based on the formula stated in para 2(ii) of Table C of the Second Schedule of the CWUR 1972.

[46] Instead, the defendant's fees is imposed on cash belonging to the society in the sum of RM11,703,294.77 which was credited into the estate of the society after the ROS order was made. It is apparent the sum of RM11,703,294.77 is not the net value from the assets realised by the defendant. The sum RM11,703,294.77 is obviously hard cash and how the cash can be possibly realised is mind boggling.

[47] On the reasons stated above it is wrong for the defendant to invoke para 2(ii) of Table C of the Second Schedule of the CWUR 1972 and imposed the defendant's fees. On the evidence adduced, there is no legal basis for the defendant to collect the defendant's fees. As such the imposition of the sum RM469,631.79 is irregular and void and ought to be returned to the society.

Interest

[48] On the issue of imposition of interest, reference is made to O 42 r 12 of the Rules of Court 2012 ('the ROC 2012') which reads:

12 Interest on judgment debts (O 42, r 12)

> Subject to rule 12A, except when it has been otherwise agreed between the parties, *every judgment debt shall carry interest* at such rate as the Chief Justice may from time to time determine or at such other rate not exceeding the rate aforesaid as the Court determines, *such interest to be calculated from the date of judgment until the judgment is satisfied*. (Emphasis added.)

[49] Order 42 r 12A of the ROC 2012 relates to financial transactions in accordance with Shariah and is not relevant to this instant case. This is the only exception to the application of the said O 42 r 12 of the ROC 2012 (besides an agreement between the parties).

[50] Order 42 r 12 of the ROC 2012 makes it very clear that every judgment debt shall carry interest at such rate as the Chief Justice may determine from time to time and such interest is to be calculated from the date of judgment until the judgment is satisfied.

[51] By way of *Arahan Amalan Ketua Hakim Negara Bil 1 Tahun 2012*, the interest rate determined is 5%pa with effect 1 August 2012.

[52] In the case of *Vathemurthy a/l Arumugam & Anor v RS Thanenthiran a/l Raman Kutty & Anor* [2019] 9 MLJ 212; [2019] 2 CLJ 132; [2018] 1 LNS 1325 the court considered O 42 r 12 of the Rules of High Court 1980 which is equivalent to O 42 r 12 of the ROC 2012 and held:

> [8] Under both, the 1980 and the 2012 Rules, it is *expressly stated that 'every judgment debt shall carry interest'*. While the rate of interest may be the subject of agreement between the parties; that *every judgment debt shall carry interest is nevertheless expressly stated*. As expressed, interest on a judgment debt need not be specifically ordered. *The position is simply that every judgment debt shall carry interest without more. Interest is statutorily conferred on all judgment debts. It is a right conferred and not merely an entitlement to be claimed. In addition, unless a different rate of interest is ordered, the rate provided in the Rules shall apply as the default rate*. (Emphasis added.)

[53] Thus interest on any judgment debt is a matter of right which is statutorily conferred and need not be specifically ordered. In this instant case, it must be noted that the society has expressly prayed for interest to be paid (see prayer 2 of the amended OS).

[54] Since the sum RM469,631.79 was wrongfully imposed, an order will have to be made by this court for the return of the said sum to the society. Under the circumstance the sum RM469,631.79 tantamount to a judgment debt which would be entitled to interest as statutorily conferred by way of O 42 r 12 of the ROC 2012.

[55] There is nothing in O 42 r 12 of the ROC 2012 which exclude any judgment made against the defendant ie the Ketua Pengarah Insolvensi from the imposition of the 5% interest. Importantly, the defendant failed to provide any statutory provision to support its argument interest ought not to be imposed on the defendant.

[56] The defendant argued interest ought not to be imposed because it is a governmental agency and not a financial institution which generate profit. That may be so but such situation does not make the defendant immune to the provision in O 42 r 12 of the ROC 2012. The defendant ought to be reminded that it used the same line of argument against the society when it rejected the society's request for the defendant's fees to be exempted where the defendant insisted even though the society is a religious and non-profit organisation there is no statutory provision which allows fees to be exempted or nominal fees to be imposed. Thus the defendant ought not be treated differently especially so when there is a specific statutory provision allowing interest on judgment debt to be imposed.

[57] Besides that, the fact that there is no interest earned from the monies credited into the estate of the society (as contended by the defendant) is immaterial because interest on judgment debt is a statutory right. Moreover the defendant's fees ought not, in the first place be imposed. As such the society is entitled to interest under O 42 r 12 of the ROC 2012.

CONCLUSION

[58] By reason of the aforesaid the amended OS was allowed and this court ordered as follows:

(a) that the sum of RM469,631.79 imposed by the defendant, purportedly as realisation fee pursuant to r 195(1) and Schedule 2, Table C of the Companies (Winding-Up) Rules 1972 ('the CWUR 1972') read together with s 17(1)(e) of Societies Act 1966 which had been paid to the defendant from the bank balances of the society is irregular and void;

(b) that the defendant returns the sum of RM469,631.79 to the society within 30 days from 20 October 2022 together with interest at the rate of 5%pa calculated from 20 October 2022 until full payment to the society; and

(c) no order as to costs.

Prayer 1 and Prayer 2 of the amended OS allowed with no order as to costs.

Reported by Dzulqarnain Ab Fatar